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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0972**

State of Minnesota,
Commissioner of Human Services, et al.,
Appellants,

vs.

A. A. F.,
Respondent.

**Filed March 4, 2019
Reversed
Bjorkman, Judge**

Douglas County District Court
File No. 21-K4-94-000712

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Minnesota (for appellants)

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Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and
Florey, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant-commissioners challenge the expungement of respondent's criminal
records held in the executive branch, arguing that the district court exceeded the scope of
its inherent judicial authority. We reverse.

FACTS

Respondent A.A.F. pleaded guilty to promoting prostitution in 1994, shortly after she turned 18. She received a stay of imposition of sentence and successfully completed a three-year probationary term.

A.A.F. received training and worked in the home healthcare field from 2002 until 2005, when respondent Minnesota Department of Human Services (DHS) determined that she is permanently disqualified from employment in that field based on the 1994 conviction. *See* Minn. Stat. § 245C.15, subd. 1(a) (2018) (providing that anyone convicted of promoting prostitution is permanently disqualified from direct-contact healthcare work).¹ Her employer assisted her in appealing the disqualification, but A.A.F. was unsuccessful in having the disqualification set aside. *See* Minn. Stat. § 245C.24, subd. 2(a) (2018) (providing that permanent disqualification cannot be set aside).

In 2013, A.A.F. petitioned to expunge her “criminal record,” emphasizing her successful rehabilitation and the barrier the conviction poses to gainful employment. The Minnesota Bureau of Criminal Apprehension (BCA) objected to expungement, but the prosecutor did not. The district court granted the petition, ordering expungement of judicial branch records; the order expressly excluded BCA records from its reach.

A.A.F. thereafter pursued additional healthcare training and applied for healthcare employment. She was once again notified of her disqualification.

¹ We cite current law, but note that the relevant disqualification provisions remain substantially unchanged since A.A.F.’s conviction. *See* Minn. Stat. § 245A.04, subds. 3(j), 3b(c)(2) (1994).

In January 2018, A.A.F. petitioned the district court to expunge the records of her conviction held by the BCA, DHS, and the Minnesota Department of Health (MDH). She argued that expungement is necessary to prevent unfairness since the records are no longer public data under Minn. Stat. § 13.87 (2018) but are still being used to disqualify her from employment. And she asserted expungement is necessary to prevent an infringement of her constitutional right to equal protection since she would have been entitled to statutory expungement had she received a stay of adjudication rather than a stay of imposition of sentence. All three agencies objected.

The district court ordered expungement on constitutional grounds, reasoning that the permanent-disqualification rule “fundamentally disenfranchises [A.A.F.] in violation of her equal protection rights” because no “meaningful connection between the permanent disqualification and [A.A.F.’s] criminal conviction” justifies treating her differently than those with no criminal past. The DHS and MDH commissioners appeal.

D E C I S I O N

There are two bases for expungement of criminal records in Minnesota—Minn. Stat. §§ 609A.01-.04 (2018) and the judiciary’s inherent authority. *State v. C.W.N.*, 906 N.W.2d 549, 552 (Minn. App. 2018). It is undisputed that A.A.F. is not entitled to statutory expungement, so this case concerns the limits of a court’s inherent authority. Whether the district court exceeded the scope of its inherent authority to expunge criminal records is a question of law, which we review de novo. *State v. A.S.E.*, 835 N.W.2d 513, 516 (Minn. App. 2013).

A court may use its inherent authority to expunge criminal records when (1) “the petitioner’s constitutional rights may be seriously infringed by retention of [the] records” or (2) “when expungement is necessary to the performance of judicial functions.” *State v. M.D.T.*, 831 N.W.2d 276, 280-81 (Minn. 2013) (quotations omitted). DHS and MDH argue that the district court exceeded its authority by expunging agency records of A.A.F.’s conviction. We agree for two reasons.

First, no caselaw supports expungement of records held by the executive branch under either basis for exercising inherent judicial authority. Our supreme court has “never held that the judiciary’s inherent authority to order expungement extends to records held in the executive branch,” even in the extraordinary circumstance where the underlying conviction was set aside. *Id.* at 281 (citing *State v. C.A.*, 304 N.W.2d 353, 361 (Minn. 1981)). And its reasoning in *M.D.T.* cautions against such an exercise. There, the court explained that the authority of the judicial branch to control its own records does not permit it “to reach into the executive branch to control what the executive branch does with records held in that branch, even when those records were created in the judiciary.” *Id.* at 282. This restraint respects “the equally unique authority” of the other branches of government and the need to accommodate “clear legislative expressions of policy” mandating that an executive-branch agency use the records in question. *Id.* (quotation omitted). In short, *M.D.T.* instructs that “[t]he judiciary’s inherent authority only allows a court to seal those records kept by the judicial branch and does not extend to records held by executive-branch agencies.” *C.W.N.*, 906 N.W.2d at 552 (citing *M.D.T.*, 831 N.W.2d at 282-83).

Second, even if inherent judicial authority encompasses expungement of executive-branch records, the district court had no basis to exercise such authority in this case. A.A.F. contends that retention of her criminal records in the executive branch infringes on her right to equal protection. An equal-protection violation occurs when the law treats an individual differently from others who are “similarly situated in all relevant respects.” *State v. Johnson*, 813 N.W.2d 1, 12 (Minn. 2012). We discern no such disparate treatment here.

A.A.F. pleaded guilty to and was convicted of promoting prostitution. Retention of the records of that conviction in the executive agencies leaves A.A.F. in the same position as all others who commit that crime or any of the other serious crimes enumerated in Minn. Stat. § 245C.15, subd. 1(a)—permanently disqualified from direct-contact healthcare work. The policy determination that those who commit such crimes are no longer suitable for such work is the type of rational distinction that the constitution permits, *see Johnson*, 813 N.W.2d at 12, and consistent with the purpose of “protect[ing] the children and vulnerable adults who are served by [DHS] licensed facilities,” *Murphy v. Comm’r of Human Servs.*, 765 N.W.2d 100, 106 (Minn. App. 2009). And it is a legislative determination regarding the use of criminal records that inherent judicial authority must accommodate. *See M.D.T.*, 831 N.W.2d at 283. Because permanently disqualifying A.A.F. from direct-contact healthcare work treats her the same as similarly situated individuals, the district court erred by determining that expungement of her executive-branch records is necessary to prevent infringement of her right to equal protection.

On appeal, A.A.F. urges two additional equal-protection arguments as alternative bases for affirming the expungement order. First, A.A.F. argues that expungement is necessary because she would have been entitled to statutory expungement had she received a stay of adjudication rather than a stay of imposition of sentence. See Minn. Stat. § 609A.02, subd. 3(a)(2). But A.A.F. is not similarly situated in all relevant respects to an individual who received a stay of adjudication for the same offense. A stay of adjudication permits a defendant to avoid a conviction upon successful completion of probation. Such a stay is justified only in those “limited circumstances” where the prosecutor agrees to the disposition or the district court determines it is necessary to remedy an abuse of prosecutorial discretion. *State v. Martin*, 849 N.W.2d 99, 102 (Minn. App. 2014), *review denied* (Minn. Sept. 24, 2014). The record does not indicate a basis for A.A.F. to have received such an extraordinary disposition, and A.A.F. stands convicted of promoting prostitution. Accordingly, this alternate equal-protection argument fails.

Second, A.A.F. asserts that she is being treated differently than similarly situated individuals whose BCA records were expunged before DHS conducted a background study, resulting in what she characterizes as an “arbitrary timing distinction.” This argument is misplaced. A.A.F. presupposes that she has successfully petitioned for expungement of BCA records now, after a DHS background study, simply because the BCA did not join the other commissioners in this appeal. But all three executive-branch expungements are based on the same reasoning and are equally valid or invalid, regardless of the BCA’s decision not to challenge the expungement order. And, as a factual matter, A.A.F. did not seek expungement of any records until DHS had disqualified her because

of them. Because there is no basis for expunging the BCA records without also expunging those held by MDH and DHS, A.A.F.'s second equal-protection argument fails.

Finally, A.A.F. argues that expungement is necessary to the core judicial function of controlling judicially created records to prevent unfairness. *See C.A.*, 304 N.W.2d at 358 (stating that part of a court's function "is to control court records . . . to reduce or eliminate unfairness"). She claims unfairness in her disqualification from healthcare employment based on criminal records that are no longer available to the public. *See Minn. Stat. § 13.87, subd. 1(b)*. But "helping individuals achieve employment goals" is not a core judicial function. *State v. S.L.H.*, 755 N.W.2d 271, 277-78 (Minn. 2008). And while the legislature deems A.A.F.'s conviction to no longer be public data, the legislature also permits executive agencies to maintain private data of convictions, Minn. Stat. § 13.87, subd. 1(b), and requires them to check the criminal history of current and prospective healthcare employees, Minn. Stat. §§ 245C.03, subd. 1(a)(3), .08, subd. 1 (2018), and permanently disqualify from direct-contact healthcare work anyone with certain convictions, Minn. Stat. § 245C.15, subd. 1(a).

In sum, we acknowledge A.A.F.'s diligent and successful rehabilitation efforts and the impediment her 1994 conviction places on her career path. But the circumstances here simply do not permit exercise of the judiciary's inherent authority to expunge her criminal records held in the executive branch.

Reversed.